UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

GES EXPOSITION SERVICES, INC.,[1]
Employer

and ***Case 12-RC-9142***

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION NO. 385[2]
Petitioner Teamsters

and ***Case 12-RC-9145***

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL #78, LOCALUNION 73, AFL-CIO[3]
Petitioner Painters

and ***Case 12-RC-9147***

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, FLORIDA CARPENTERS REGIONAL COUNCIL, CARPENTERS AND LATHERS, LOCAL 1765[4]
Petitioner Carpenters

and

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOTION PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES, ITS TERRITORIES AND CANADA, LOCAL NO. 835, AFL-CIO, CLC[5]
Intervenor IATSE

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, GES Exposition Services, Inc., is engaged as a general services contractor for exhibition trade shows and conventions. The employees

at the Employer's Orlando facility include warehouse, showsite, truck drivers, clerical and other employees.

The Teamsters,[6] Painters[7] and Carpenters[8] filed petitions with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, to represent certain employees employed by the Employer. IATSE[9] intervened in the proceedings. On July 21, 2005, a hearing officer of the Board held a hearing in this case. The issue presented for resolution is whether the petitioned-for units are appropriate for collective-bargaining purposes.

The Employer argues that the Teamsters' and Carpenters' petitioned-for units are inappropriate primarily because they would fragment the bargaining unit currently represented by the Carpenters, as the Carpenters only seek a portion of its existing unit and the Teamsters seek the remainder of the existing unit, plus the truck drivers. The Teamsters and Carpenters argue that their petitioned-for units are appropriate as they have a separate community of interest. The Carpenters also argue that its petitioned-for unit is a separate craft unit. The Painters argue that its petitioned-for unit, which is co-extensive with the unit currently represented by the Carpenters, is an appropriate unit. IATSE has not taken a position on the appropriateness of the petitioned-for units stating that it intervened to protect its separate collective-bargaining relationship with the Employer. None of the petitioned-for units include IATSE-represented employees.

PROCEDURAL BACKGROUND

The record reflects that, since 1994, the Employer and IATSE have been parties to three (3) successive collective-bargaining agreements, the most recent of which is effective from January 1, 2005 through October 1, 2008, herein called the IATSE agreement. IATSE represents certain of the Employer's warehouse and showsite employees. The scope of the bargaining unit work, as described in

Article 2 of the IATSE agreement, consists of handling and placing of pipes, bases, drape, tables, table draping, erecting or dismantling display booths and/or exhibits, modular systems, pegboards, tack boards, drape hung or rigged, carpeting, furniture, platforms, I.D. signs within booth, floor marking, waste baskets, aisle banners, signage, table risers and association work as it pertains to the scope of the agreement. The IATSE agreement further provides that the rolling of aisle carpeting at the close of a show is not limited solely to the employees in the bargaining unit represented by IATSE. In addition, the IATSE agreement provides that the scope of the bargaining unit work does not extend to transportation or warehouse handling of freight and empties.

Although not discussed at the hearing, I take administrative notice of Case 12-RC-8371, filed on June 29, 1999, and in which, on February 11, 2000, Carpenters was certified as the collective-bargaining representative of the following employees of the Employer:

> All regular part-time and on-call showsite truck drivers, helpers, freight handlers, forklift operators, checkers, furniture handlers, warehouse general laborers, carpet handling employees, employees engaged in exhibit building, erection and dismantling, and all other regular part-time and on-call employees performing work of a similar nature and other work as may be assigned by the Employer, including all work performed by regular part-time and on-call employees in the GEM shop, carpenter shop and drapery shop, in or out of the Employer's facility located in Orlando; excluding all foremen, office clerical employees, regular full-time employees of the Employer (defined to include those receiving or eligible to receive or participate in the Employer's Benefit Plans), employees who regularly perform work within the bargaining unit represented by IATSE and all guards and supervisors as defined in the Act.

The record further shows that, since 1996, the Employer and Carpenters have been parties to three (3) successive collective-bargaining agreements, the most recent of which is effective from September 26, 2002 through September

25, 2005, herein called the Carpenters agreement. The bargaining unit represented by the Carpenters, as described in Articles I and II of the Carpenters agreement, consists of the following employees: helpers, freight handlers, forklift operators, checkers, furniture handlers, casual and part-time warehouse general laborers, casual and part-time employees performing work of a similar nature and other work as may be assigned by the Employer, including casual and part-time employees of the GEM shop when working in the GEM shop, all work performed by casual and part-time employees of the carpenter shop and all work performed by employees of the drapery shop; excluding all supervisors, foremen, regular full-time employees of the Employer (defined to include those receiving or eligible to receive or participate in the Employer's Benefit Plans), day laborers, all office and clerical employees and guards as defined by the Act.

The Employer, the Carpenters and the Teamsters each filed a timely post-hearing brief, while the Painters and IATSE did not file briefs.[10]

POSITIONS OF THE PARTIES

The Employer contends that the appropriate bargaining unit is that which the Carpenters currently represents, which consists of: 1) carpentry shop employees, 2) carpet shop employees, 3) drapery shop employees, 4) GEM shop employees, 5) forklift operators and 6) freight handlers. The Employer contends that the Board recognizes no theory under which a union (i.e. Carpenters) which represents a current unit can seek an election among only part of that unit. The Employer also maintains that a raiding union (i.e. Teamsters) cannot seek to fracture an existing unit. Finally, the Employer asserts that the four (4) categories of employees sought by the Carpenters are not appropriately characterized as a craft unit, when evaluated under the criteria the Board has set for such units.[11]

The Carpenters seek to represent a bargaining unit of all full-time and part-time employees in the Employer's carpentry shop, carpet shop, drapery shop and GEM shop, excluding all the employees that the Teamsters seek to represent, and excluding office clerical employees, guards and supervisor as defined in the Act.[12] Thus, the Carpenters seek only a portion of the bargaining unit they currently represent and contend that such portion is a craft unit. The Carpenters maintain that there is not a community of interest between the four (4) categories of employees it seeks to represent and the rest of the employees in the bargaining unit.

The Teamsters seek to represent a bargaining unit of all full-time and regular part-time casual employees performing showsite duties as general laborers, freight handlers, forklift operators, checkers, furniture handlers, employees involved in loading and unloading of all pre-assembled GEM and handling of empty containers, truck drivers, association freight workers and warehouse freight handlers, excluding all the employees that the Carpenters seek to represent, and excluding office clerical employees, guards and supervisors as defined in the Act.[13] Consequently, the Teamsters seek an election among the unit employees not sought by the Carpenters, as well as five (5) currently unrepresented truck drivers. The Teamsters assert that the four (4) categories of employees sought by the Carpenters do not have a community of interest with the remainder of the employees in the existing bargaining unit. The Teamsters also claim that the truck drivers share a community of interest with the forklift operators and freight handlers.

The Painters seek to represent a bargaining unit of all full-time and part-time casual employees performing showsite duties as general laborers, freight handlers, forklift operators, checkers, furniture handlers, employees involved in loading and unloading of all pre-assembled GEM and handling of empty

containers, association freight workers, warehouse freight handlers, carpentry shop employees, carpet shop employees, drapery shop employees and GEM shop employees, excluding truck drivers, office clerical employees, guards and supervisors as defined in the Act.[14] Accordingly, the Painters seek to represent the bargaining unit as it is currently in existence.

As noted above, IATSE stated that the basis of its intervention in these proceedings is limited to protecting its interests in the bargaining unit of employees it currently represents at the Employer's facility. IATSE stated that it is not seeking to represent any employees outside of the IATSE agreement. Moreover, IATSE noted that the IATSE agreement serves as a contract bar concerning all employees in the bargaining unit covered by its agreement.[15]

The parties stipulated that the appropriate bargaining unit should exclude all office clerical employees, guards and supervisors as defined in the Act, as well as all employees covered under the IATSE agreement. Thus, no petitioner is seeking to represent any employees currently represented by IATSE.

There are approximately 85 employees in the bargaining unit sought by the Teamsters. There are approximately 25 employees in the bargaining unit sought by the Carpenters. There are approximately 105 employees in the bargaining unit sought by the Painters and urged by the Employer.[16] This is the same unit as the existing unit currently represented by the Carpenters. Thus, the only issue presented is the scope of the bargaining unit.

Davis on-Paxon Formula

The parties stipulated that the formula that should be used to determine which casual employees are eligible to vote in any election to decide whether they wish to be represented for purposes of collective bargaining by the Carpenters, the Painters, the Teamsters or to remain unrepresented would be based on the principles established in Board precedent under Davison-Paxon

Co., 185 NLRB 21 (1970). Indeed, the most widely used test to determine "regularity" of employment is set forth in Davison-Paxon and requires that an employee regularly average four (4) or more hours of work per week for the last quarter prior to the eligibility date. In this regard, the record contains Employer payroll records showing the number of hours worked by employees covered under the Carpenters agreement for the first and second quarters of 2005.[17]

FACTS

The Employer's counsel noted that the Employer's peak seasonal periods are January through March, as well as October. The Employer's counsel also noted that the Employer has no full-time employees in the bargaining units represented by IATSE and the Carpenters and that all of those employees are casuals with no guarantee of a certain number of work hours.

Stephen Moore

Stephen Moore testified that he has been employed with the Employer for three and a half (3½) years and currently holds the title of general manager for the South Atlantic Division, which covers Florida, Georgia, South Carolina and Nashville. Moore stated that, as general manager, he is responsible for the long-range strategic planning for the Division, the execution of day-to-day operations and collective-bargaining negotiations. Indeed, Moore was directly involved in negotiating the IATSE agreement, but took no part in the Carpenters Agreement. Moore noted that two-thirds of the Employer's facility is made up of warehouse space and the rest is office space.

Admitted as an exhibit in the record is an organizational chart of the Employer's Orlando, Florida facility. Moore testified that the employees represented by the Carpenters and IATSE who perform warehouse job duties report to, and have interaction with, warehouse supervisors under John Ellis,

warehouse manager. Moore also noted that employees who perform showsite job duties report to, and have interaction with, warehouse supervisors under Edwin Belisle, senior operations manager, and that some employees are under the supervision of Matthew Holmes, operations manager, who reports to Jim Murphy, senior operations manager in the exhibit and design (E&D) department.[18]

Moore stated that the showsites are where the trade shows and conventions are held, which usually take place at the Orange County Convention Center and the Walt Disney World Dolphin and Swan Hotels. Moore noted that 65% of the trade shows on which the Employer performs services are located in Orlando, Florida.

Moore testified that the employees represented by the Carpenters perform work duties in the carpentry, carpet, drape and GEM shops (excluding assembly and disassembly of pre-built GEM structures, which is performed by IATSE-represented employees). Moore pointed out that GEM is a modular system, akin to an adult-size erector set, used to build exhibits mostly from aluminum. Moore said that the carpentry shop builds wood counters and exhibit booths and that the drapery shop performs pipe and drape work, which consists of assembling fabric drape that hangs from a metal rod used to separate booths. Moore noted that there are between two (2) to five (5) employees in each of the four (4) warehouse shops.

Admitted as an Employer exhibit into the record is a document showing, since January 1, 2005, the number of employees in each job classification and whether they are represented by IATSE, the Carpenters, the IBEW or unrepresented. Moore stated that, during peak periods of business, when for example the Employer is performing work on approximately 12 showsites, the Employer employs up to 450 general laborers represented by IATSE who

perform showsite job duties. The Employer exhibit further reflects that IATSE represents up to six (6) furniture handlers,[19] up to 35 warehouse employees and up to 200 employees who perform association work. The Employer exhibit also reflects that the Employer employs the following employees represented by the Carpenters: up to 35 freight handlers, up to 130 forklift operators, up to 35 warehouse employees, up to 25 employees who perform association work and up to 20 employees who perform loading and unloading of pre-assembled GEM structures.[20]

Moore stated that freight handlers and forklift operators move empty recycling containers used by exhibitors to ship items to and from their showsite booth. Moore also noted that the freight handlers use pallet jacks at the showsite and unload furniture from the truck by hand. Moore further said that the employees classified as general laborers in the Teamsters and Painters petitions are referred to as freight handlers by the Employer.

John Ellis

John Ellis, warehouse manager, also testified on behalf of the Employer. Ellis stated that he has been employed by the Employer for 13 years and that his general duties involve overseeing the day-to-day operations of the six (6) warehouse departments which are as follows: 1) marshalling; 2) dispatch & receiving; 3) carpentry; 4) carpet; 5) drapery; and 6) GEM.[21] Ellis said that the marshalling department performs the work needed for exhibitors to transport freight to the Employer's facility and the showsites. Ellis noted that typically four (4) employees work in the carpentry shop, whose duties are to make wood cabinetry, counter tops, custom-made exhibit pieces and perform repairs using saws, routers and other power cutting tools. Ellis pointed out that one (1) to four (4) employees work in the carpet shop and that their duties are to roll up, roll out, cut, clean, load and label carpet in order for it to be shipped to the showsites.

Carpets can be as large as 100 feet by 100 feet and come in different colors, textures and thicknesses. After the exhibition shows, the carpets can be cleaned and re-used or recycled. Ellis further stated that three (3) to four (4) employees work in the drapery shop, which pre-strings cloth and plastic 8-24 foot drapes to rods and assembles 18-40 inch table skirts. However, drapery employees do not mend or sew drapes. Ellis noted that 16-18 employees work in the GEM shop and that their duties are to fabricate booths and put the necessary pieces in a crate with a floor plan or diagram attached to the outside of the crate. The employees represented by the Carpenters pack the crate and deliver it to the showsites. Afterwards, the employees represented by IATSE unpack the crates and assemble the booths.

Ellis stated that the employees in the four (4) warehouse shops (i.e., carpentry, carpet, drapery and GEM) read prints, identify various construction materials, and use tape and power tools to cut materials to their necessary size. Ellis also noted that the employees who perform duties in the four (4) warehouse shops are also certified forklift operators. However, Ellis acknowledged that forklift operators would not generally be asked to operate equipment such as a table saw.

Ellis testified that Ralph Hickman supervises the truck drivers, as well as the employees in the freight and receiving departments who are represented by the Carpenters. Ellis noted that Brenda Rainey supervises the carpentry and GEM shop employees and that Jim Griffin supervises the carpet and drape shop employees. Ellis further said that Eric Birdsell supervises one freight handler and Marc Cancel supervises one employee in the marshalling department.

Ellis stated that the employees in the four (4) warehouse shops have the same set starting time (7:30 a.m.), the same lunch period (12:00 p.m. to 12:30 p.m.) and the same quitting time (4:00 p.m.). Ellis noted that the warehouse

employees do not punch a time clock, but that their work hours are recorded by the union steward at a sign-in desk and that employees then report to their supervisor after signing-in. Ellis also noted that all employees use the same cafeteria/snack area and that no employees wear uniforms. The only dress code is that employees are not allowed to wear tank tops or open-toed shoes. In addition, all employees are required to wear a badge, which has their name and photograph on it, as well as the Employer's name.

Ellis pointed out that the warehouse employees bring their own hand tools to work such as a tape measure, razor knife, pliers and other similar hand tools. The Employer provides employees with screw guns, circular saws and other power tools. Ellis stated that the Employer wants employees in the carpentry shop to be experienced with power tools, such as a table saw. However, Ellis explained that carpentry shop employees are not required to have any kind of certification. In addition, Ellis said that no special training, certification, education or experience is required for employees to work in the other warehouse shops.

Ellis testified that the Carpenters agreement provides employee wage rates for various classifications of employees. In particular, Ellis stated that in the carpentry shop there are five (5) wage rate classifications as follows: 1) finish carpenter; 2) lead worker; 3) tradeshow A; 4) tradeshow B; and 5) tradeshow C employee. Ellis noted that the Employer employs six (6) lead employees covered by the Carpenters agreement.[22] Ellis further stated that the carpet, drapery and GEM shops employ the tradeshow A and tradeshow B classifications, while the GEM shop also employs the lead worker classification.

Ellis stated that the warehouse employees interchange job duties by working in multiple areas and shops. Ellis noted that the employees move around to different warehouse jobs based on the volume and demand of the Employer's

business. Ellis explained that interchange among the four (4) warehouse shops occurs about 3-4 times per month. Ellis further acknowledged that the freight handlers and forklift operators do not typically work in the four (4) warehouse shops. However, Ellis noted that, when the demand for work is high, the Employer uses freight handlers and forklift operators to work in the carpet, drape, GEM and dock areas. On such occasions, the freight handlers and forklift operators perform the same work of employees who normally work in those areas. In addition, Ellis said that finish carpenters, which job classification is only found in the carpentry shop, move freight around on occasion and more typically during the Employer's busy season, like January.[23] Similarly, Ellis stated that the employees in the four (4) warehouse shops perform the job duties of forklift operator and freight handler positions on bigger exhibition shows and during some weekends. In fact, Ellis said that the employees in the four (4) warehouse shops supplement their income by operating a forklift about 50-60% of the time. Ellis mentioned that, while all forklift operators are certified, 80% of the employees in the four (4) warehouse shops are certified to drive a forklift and in fact operate one at times.

Ellis testified that the Employer employs four (4) full-time and one (1) part-time truck driver. Ellis stated that the truck drivers generally work 40 hours per week. In this regard, Ellis said that the truck drivers' work schedules vary depending on the Employer's business schedule. Ellis noted that if no exhibition shows are scheduled then the truck drivers work from 8:00 a.m. to 5:00 p.m. However, if there are exhibition shows scheduled then their work schedules are staggered to comply with U.S. Department of Transportation (DOT) requirements. Ellis noted that truck drivers earn wages of $18.00-20.00 per hour. Ellis further said that all the truck drivers possess a commercial driver's license (CDL).[24]

Ellis stated that the casual employees represented by the Carpenters and IATSE receive fringe benefits through their respective union. On the other hand, Ellis noted that the truck drivers receive fringe benefits through the Employer, such as vacation and sick leave, health insurance and 401(k) retirement benefits. Ellis admitted that, if no other employees are available or if it is before the start of the shift, the truck drivers sometimes remove freight from their truck using a forklift or power jack and sometimes help forklift operators and freight handlers load and unload trucks.

Howard D. Coleman

Howard D. Coleman testified that he has held the job title of operations manager for three (3) years and has been employed with the Employer for 14 years. Coleman stated that he supervises the employees away from the warehouse at the showsites, which generally take place at the Orange County Convention Center (OCCC), Walt Disney World Dolphin and Swan Hotels, Marriott Orlando World Center and Gaylord Palms. Coleman noted that he has an office at the Employer's warehouse facility, but spends about 70% of his time at the showsites. Coleman supervises the work of employees, represented by both IATSE and the Carpenters, at the exhibition shows from beginning to end.

Coleman explained that, at the beginning of the exhibition show, called a load-in, the IATSE-represented employees perform duties involving lay-out and floor markings of the showsite for the booths to be erected. Afterwards, the equipment, such as steel, carpet and drape, is delivered to the showsite and the freight is handled by the forklift operators and freight handlers represented by the Carpenters. Coleman noted that a load-in takes anywhere from half a day to a week depending on the size of the exhibition show. Coleman also pointed out that the load-in work on the exhibition showsite is performed from front to back and top to bottom. After the load-in, IATSE employees erect the booths and the

forklift operators and freight handlers represented by the Carpenters handle the exhibitor freight that is delivered to the Employer's warehouse facility or at the showsite. In addition, the forklift operators and freight handlers perform association freight work and IATSE employees perform duties concerning the assembly and disassembly of booths. At the end of the exhibition show the employees perform what are known as "load-out" duties, which is a much shorter process than load-in.

Coleman testified that the bulk of the showsite employees' time is spent during the load-in and load-out process. However, Coleman said that during the exhibition show, the Employer uses a small crew of forklift operators and freight handlers to perform some association work and provide accessible storage services for exhibitors. Coleman noted that forklift operators and freight handlers do not use tape or power tools other than a forklift or power jack. In addition, Coleman pointed out that forklift operators and freight handlers are required to read floor plans to know where to transport equipment, but do not use blueprints to construct booths. Pursuant to the Occupational Safety and Health Administration (OSHA) requirements, forklift operators and freight handlers must possess a forklift certification card.

Coleman stated that he sets the schedule for employees at the showsite. In this regard, Coleman said that there is no set reporting or working schedule for employees because everything depends on the exhibition show and where the Employer is allowed in the building at various times. Employees continue working until all of their necessary duties are performed, which could range between four (4) to 18 hours per day. Coleman noted that the Employer's operations coordinator marks employee time cards to notify them at what time to return to work the next day, if at all. Coleman pointed out that the Employer uses approximately 130-150 forklift operators and approximately 25 freight handlers

who are covered by the Carpenters agreement. Coleman mentioned that some employees work both at the showsite and at the Employer's warehouse.

Robert T. McCoy

Robert T. McCoy, Carpenters council representative, testified that the casual employees who work for the Employer also work for other exhibition and trade show industry companies, such as Freeman Decorating, Brede, Shepard and Champion. McCoy noted that the casual employees are generally represented by three (3) unions, including the Carpenters, the Teamsters and IATSE. McCoy stated that, pursuant to the Carpenters agreement, the Employer contributes $1.75 per hour to the Carpenters health and welfare fund, but that the employees do not receive health insurance benefits unless they work 660 hours in a six-month period. McCoy noted that most employees do not meet that requirement.

Steve Hoke

Steve Hoke testified that he has been employed with the Employer for two and half (2½) years and has held the job title of foreman finish carpenter in the carpentry shop for one (1) year.[25] Hoke stated that, as part of his regular work duties, he uses specialized tools traditionally used by journeyman carpenters and that other Employer carpenters generally use the same tools. Hoke said that he has many hand tools in his tool box. While Hoke admitted that the Employer does not require him to possess those tools, he stated that they help him to perform his work more efficiently.

Hoke said that he is not a certified forklift operator, but that two (2) of the Employer's finish carpenters are certified forklift operators. Hoke noted that, during the Employer's current inventory period, employees in the carpentry shop

have moved pallets into an empty trailer, but that such equipment was not being transported to any showsite. Hoke said that it is not typical for employees in the carpentry shop to operate forklifts or load trailers at showsites. In addition, Hoke stated that the Employer has never asked him to perform work as a showsite forklift operator and does not know of any other carpenters who have performed that kind of work either. Hoke mentioned that forklift operators do not work in the carpentry shop because they do not possess the skills necessary to work there.

Dekalo Whitfield

Dekalo Whitfield testified that he has worked for the Employer intermittently since 1994 mainly performing showsite freight work. Whitfield stated that he is a member of three unions: IATSE, the Carpenters and the Teamsters. Whitfield noted that showsite employees work for multiple employers in order to make a living. Whitfield said that, because he does not refuse any work offered to him, he has worked in the Employer's warehouse about once per year, for 2-3 days at a time, loading and unloading trucks and has also worked in the carpet shop rolling out and cleaning carpet. Whitfield noted that usually employees who work at the showsites do not work in the Employer's warehouse very often, but that on occasion a few do so. Similarly, Whitfield pointed out that, about 2-3 times per year, when the Employer is running short on employees during the big exhibition shows, some warehouse employees work at the showsite helping with load-out, which involves transporting the Employer's equipment. Whitfield explained that a forklift operator does not need any tools to perform his work duties and that, on the occasions when he has worked in the warehouse, he has not been required to use or possess any tools.

ANALYSIS

General Board Precedent

Section 9(b) of the Act provides that "[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof." In this regard, the cornerstone of the Board's policies on appropriateness of bargaining units is the community of interest doctrine, which operates "to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment." 15 NLRB Ann. Rep. 39 (1950). "Such a mutuality of interest serves to assure the coherence among employees necessary for efficient collective bargaining and at the same time to prevent a functionally distinct minority group from being submerged in an overly large unit." Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 172-173 (1971).

The fundamental factor in determining an appropriate unit is the community of interest among the employees. NLRB v. Action Automotive, Inc., 469 U.S. 490 (1985). The degree to which employees share a community of interest is measured by a number of factors, including method of wages; hours of work; employment benefits; nature of supervision; difference in training and skills; interchange or contact with other employees; functional integration; and the extent to which they have historically been a part of a distinct bargaining unit. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962). Furthermore, it is well established that, in deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. P.J. Dick Contracting, 290 NLRB 150, 151 (1988). The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. Overnite Transportation Co., 322 NLRB 723 (1996).

Bearing these principles in mind, I find the bargaining units petitioned-for by the Carpenters and the Teamsters to be inappropriate. The four (4) most compelling factors in finding these units to be inappropriate are: (1) bargaining history among the petitioned-for employees; (2) the degree of interchange between the petitioned-for unit and the classifications the Carpenters and Teamsters seek to exclude; (3) the work-related contact between the petitioned-for employees and the excluded classifications; and (4) the functional integration of the Employer's operations.

Bargaining History

It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate. See Children's Hospital of San Francisco, 312 NLRB 920, 929 (1993) ("Both the Board and the courts have long recognized not only that the traditional factors, which tend to support the finding of a larger or single unit as being appropriate, are of lesser cogency where a history of meaningful bargaining has developed, but also that this fact alone suggests the appropriateness of a separate bargaining unit and that compelling circumstances are required to overcome the significance of bargaining history.") (internal quotation marks omitted), enfd. sub nom. California Pacific Medical Center v. NLRB, 87 F. 3d 304 (9th Cir. 1996). See also Fisher Broadcasting, Inc., 324 NLRB 256, 262-263 (1997); Buffalo Broadcasting Co., 242 NLRB 1105, 1105 fn. 2 (1979) ("The Board is reluctant to disturb units established by collective

bargaining as long as those units are not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act."); Columbia Broadcasting System, Inc., 214 NLRB 637, 643 (1974); Great Atlantic & Pacific Tea Co., 153 NLRB 1549, 1550 (1965) ("[T]he Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances.").

The bargaining history here between the Employer and the Carpenters from 1996 to the present, along with the existing collective-bargaining agreement between the Employer and IATSE, weigh heavily in favor of respecting the historical bargaining units negotiated by those parties. There is nothing intrinsically inappropriate about the existing units: employees in those units perform work duties that are significantly distinct from each other and the units each have a distinct bargaining history. The existing units are not repugnant to the Act and neither the Carpenters nor the Teamsters has established sufficiently compelling circumstances that would warrant disturbing the established unit currently represented by the Carpenters. Indeed, there is no evidence that the Employer has had a significant change in operations or job classification of employees during the parties' bargaining history. See Canal Carting, Inc., 339 NLRB 969 (2003); Met Electrical Testing Co., 331 NLRB 872 (2000); Banknote Corp. of America, 315 NLRB 1041, 1043 (1994), enfd. 84 F.3d 637 (2d Cir. 1996).

Other Community of Interest Factors

In addition to considering the history of bargaining between the parties in the petitioned-for bargaining units, I have also looked at the other traditional

factors under a community of interest analysis. In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, contact and interchange among employees, fringe benefits, bargaining history, and similarities in wages, hours, benefits, and other terms and conditions of employment. Home Depot USA, Inc., 331 NLRB 1289 (2000); Esco Corp., 298 NLRB 837 (1990).

An analysis of these factors leads to a conclusion favoring the bargaining unit as it currently exists. There are substantial similarities in the wages and terms and conditions of employment of the petitioned-for employees. In particular, all of the unit employees are casuals, with no guarantee of a certain number of work hours. All employees in the bargaining unit receive health and related fringe benefits through a union-sponsored plan. In addition, all the employees share the same meal and parking area, wear the same identification badges and are not required to wear uniforms.

Moreover, there is substantial interchange and contact among employees. In this regard, the record reveals that, during times of high work demand, freight handlers and forklift operators perform the duties of employees in the warehouse shops. Conversely, the record reflects that, on bigger exhibition shows and during some weekends, the warehouse shop employees perform the duties of forklift operators and freight handlers by operating forklifts at the showsites about 50-60% of the time. Thus, it is noteworthy that 80% of the employees in the warehouse shops are certified to drive a forklift and in fact operate one at various times. During these times of interchange, the employees have a significant amount of contact with each other.

It is also important to note that the petitioned-for unit employees all possess similar skills. In fact, most of the employees do not need to obtain any special training, certification, education or experience. While the forklift operators must be certified, most of the employees already possess such certification. In sum, with the exception of the carpentry shop whose employees require skills with power tools, all unit employees can and readily do interchange job functions based on their related skills.

The record also demonstrates that the bargaining unit employees' job duties are functionally integrated. In this regard, the employees all work towards the common goal of getting display and exhibition units constructed, shipped out of the warehouse and into the showsites. More importantly, the employees work together sharing responsibilities and tasks as the need arises, moving from one job classification to another, based on the Employer's business volume and demand. As a result, I find that the Employer has demonstrated a functional integration of its operations and a substantial community of interest among all the petitioned-for employees, with the exception of the currently unrepresented truck drivers sought by the Teamsters. Globe Furniture Rentals, 298 NLRB 288 (1990).

Thus, I conclude that the forklift operators, freight handlers, carpentry, carpet, drapery, and GEM shop employees have job duties and responsibilities that are functionally integrated, encounter substantial employee interchange, have regular contact with one another, possess similar skills and share a sufficient community of interest with each other to conclude that the distinct classifications sought by the Carpenters and the Teamsters cannot appropriately constitute their own separate units.

Severance of Craft Unit

The Carpenters contend that the warehouse employees in the four (4) shops (i.e., carpentry, carpet, drapery and GEM) constitute a separate appropriate unit. In this regard, the Carpenters essentially argue that its petitioned-for unit of employees is a craft unit that should be severed from the existing bargaining unit.[26]

The controlling precedent in this area is Mallinckrodt Chemical Works, Uranium Division, 162 NLRB 387 (1966), wherein the Board reconsidered the craft severance policy it promulgated in American Potash & Chemical Corp., 107 NLRB 1418 (1954). Under American Potash, the Board established two basic tests for severance: (1) the employees involved must form a true craft or departmental group; and (2) the petitioning Union seeking to carve out a craft or departmental unit must be one which has traditionally represented that craft. Id. at 1422. Upon review, the Board concluded that the application of these "mechanistic" tests always led to the result that the interests of the craft employees always won out "without affording a voice in the decision to the other employees, whose unity of association is broken and whose collective strength is weakened by the success of the craft or departmental group, in pressing its own special interests." Mallinckrodt, supra at 396. It furthered concluded that the policy of directing severance elections simply upon fulfilling the craft status and traditional representative standards failed to "permit satisfactory resolution of the issues posed in severance cases." Id. The Board explained that by limiting consideration exclusively to the interests favoring severance while completely overlooking the equally important statutory policy of maintaining the stability of existing bargaining relationships, it was prevented "from discharging its statutory

responsibility to make its unit determinations on the basis of all relevant factors, including those factors which weigh against severance." Id. Thus, it concluded that all future severance determinations should be made after consideration of all the relevant factors with an aim toward balancing the interest of the Employer and the entire group of employees in maintaining the stability of labor relations and the benefits of an historical plantwide bargaining unit against the interest of a portion of that group in having the freedom of choice to break away from the historical unit. Id. at 392. Each case involves a judgment of what would best serve the worker in his/her effort "to bargain collectively with his employer, and what would best serve the interest of the country as a whole." Id. (quoting NLRB v. Pittsburgh Plate Glass Co., 270 F.2d 167,173 (4th Cir.1959), cert. denied 361 U.S. 943 (1960)).

The party seeking severance clearly bears a "heavy burden," Kaiser Foundation Hospitals, 312 NLRB 933, 935 fn. 15 (1993), as it is very difficult to establish a craft unit under Mallinckrodt. Vincent M. Ippolito, Inc., 313 NLRB 715, 718 (1994), enfd. as modified 54 F.3d 769 (3d Cir. 1995). As the Board explained, it "is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio." Kaiser Foundation Hospitals, supra at 936.

The Board in Mallinckrodt outlined several areas of inquiry which should be considered when determining the issue of craft severance. While not exhaustive, the following factors were deemed

relevant: 1) whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists; 2) the collective-bargaining history related to those employees, with an emphasis on whether the existing patterns of bargaining result in stable labor relations and whether that stability will be upset by the end of the existing patterns of representation; 3) the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit, the degree of their participation or lack of participation in the creation and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation; 4) the degree of integration of the Employer's production processes, including the degree to which the operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit; 5) the qualifications of the Union seeking severance; and 6) the pattern of collective bargaining in the industry. Mallinckrodt, supra, 162 NLRB at 397. The Board also considers whether the group of employees seeking severance is "similar to groups [it] heretofore has found entitled to severance from an overall unit." Id. at 399. It is notable that severance under Mallinckrodt has been granted sparingly by the Board.

The Board's reluctance to grant severance based on craft is reflected in numerous cases. For example, in Kaiser Foundation Hospitals, 312 NLRB at 934, the Board reversed a Regional Director's Decision and Direction of Election granting severance of 50 skilled

maintenance employees from a unit of approximately 2800 nonprofessional employees. While the skilled maintenance employees would normally constitute a homogeneous craft or departmental unit, the Board noted that it has, "declined to sever a group of maintenance employees from an existing production and maintenance unit in the face of substantial bargaining history on a plantwide basis." Id. at 935. The Employer and the incumbent union had a collective-bargaining history of almost 40 years and there was no evidence that the incumbent union had failed to adequately represent the employees. Id.

To determine whether a petitioned-for group of employees constitutes a separate craft unit, the Board examines whether the petitioned-for employees participate in formal training or an apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the Employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. Schaus Roofing & Mechanical Contractors, Inc., 323 NLRB 781, 783 (1997) (quoting Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994)).

Despite overruling American Potash, the Board in Mallinckrodt stated, “we are not in disagreement with the emphasis the American-Potash decision placed on the importance of limiting severance to true craft or traditional departmental groups, nor do we disagree with the admonitions contained in that decision as to the need for strict adherence to these requirements. Our dissatisfaction with the Board's

existing policy in this area stems not only from the overriding importance given to a finding that a proposed unit is composed of such employees, but also to the loose definition of a true craft or traditional department which may be derived from decisions directing severance elections pursuant to the American Potash decision." Mallinckrodt, supra, 162 NLRB at 397 fn. 14.

The American Potash definition of "true craft unit," which was approved in Mallinckrodt states: [A] true craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers. To be a "journeyman craftsmen" an individual must have a kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training. American Potash, supra, 107 NLRB at 1423. See also Burns & Roe Services Corp., supra at 1308.

After weighing all the relevant factors, I find that severance of the carpentry, carpet, drapery and GEM shop employees from the existing collective bargaining unit is not appropriate. In this regard, the record reveals that employees in the warehouse shops, proposed by the Carpenters as an appropriate bargaining unit, do not possess certification or undergo an apprenticeship as defined by a traditional craft unit. The record also reflects that when seeking to fill a vacancy in the warehouse shops, the Employer does not seek to hire a licensed or certified craftsman. The Employer simply hires an employee on a temporary basis in order to measure their skills on the job. This informal evaluation is not the kind of apprenticeship work that

distinguishes a craft unit. Therefore, the warehouse shop employees are not a "true craft unit" as that phrase has traditionally been applied.

It is recognized that the Board has held that lack of a formal training or apprentice program does not necessarily negate separate craft status, where the Employer requires that the employees have extensive experience and no other class of employees is required to have the same level of knowledge. Burns & Roe Services, supra, 313 NLRB at 1308. However, the facts here reveal that other bargaining unit employees possess similar skills as some of the warehouse shop employees. For example, the record reveals that all warehouse employees report to work with their own basic tools such as a tape measure, razor knife, pliers and other similar hand tools. The Employer provides additional tools such as screw guns, circular saws, sanders and other power tools. Admittedly, only employees in the carpentry shop require a higher degree of training or experience for the use of carpentry skills and heavier power tools, such as a table saw. However, to the extent that the Carpenters might have been able to argue in favor of a craft unit for employees of the carpentry shop, it undercut its argument by including in its proposed craft unit employees of the carpet, drapery and GEM shops, none of whom require specialized skills, training or experience.

The Board has also recognized that certain employees, though lacking the hallmark of craft skill, may also require that they be treated as severable units. Numerous employers have traditionally distinct departments comprised of employees identified with traditional trades or occupations and who have a certain interest in collective bargaining for that reason. The Board explained that the

circumstances for such severance is "strictly limited in character and extent," and that this concept is not to be used "for fragmentizing plant-wide units into departments wherever craft severance cannot be established." American Potash, supra, 107 NLRB at 1423-1424. Because this concept does not provide a substitute basis for avoiding craft-unit criteria, the Board requires strict proof that (1) the departmental group is functionally distinct and separate; and (2) the petitioner is a union which has traditionally devoted itself to serving the special interest of the employees in question. Id. at 1424.

On balance, I conclude that the record does not support a finding that the carpentry, carpet, drapery and GEM shop employees are a functionally distinct department in any traditional sense. In particular, the Carpenters' proposed craft unit employees share skills and functions with other warehouse employees, do not receive job assignments along craft lines, earn wages comparable to those of other unit employees and share common supervision.

The facts here are distinguishable from those found in cases where the Board has directed the establishment of a separate craft unit. For example, in MGM Mirage, 338 NLRB 529 (2002), the employer: 1) required carpenters to have at least two (2) to five (5) years of carpentry experience (equivalent to journeyman status) before being hired; 2) assigned all work based along craft lines; 3) had separate supervisors for carpentry employees; and 4) earned nearly $10.00 more per hour than their unskilled co-workers. None of those facts are present in the instant case.

In conclusion, I decline to disturb the existing pattern of representation which has resulted in a firmly established and existing

collective-bargaining relationship of about nine (9) years between the Carpenters and the Employer. Based on the foregoing and the entire record in the case, I conclude that the unit sought by the Carpenters is not appropriate under Mallinckrodt and, accordingly, severance is denied.

Truck Drivers

In its petition, the Teamsters seek to include five (5) unrepresented truck drivers in the bargaining unit found appropriate herein. The Teamsters contend that the truck drivers share a community of interest with the bargaining unit employees. The Board has acknowledged that truck drivers often have a "dual community of interest," with certain factors supporting their inclusion in the same unit as other plant employees, and certain factors favoring their representation in a separate unit. See Pacemaker Mobile Homes, 194 NLRB 742, 743 (1971). I conclude that the unrepresented truck drivers do not share a community of interest with the bargaining unit of employees currently represented by the Carpenters.[27]

The record reflects that the truck drivers enjoy substantially different terms and conditions of employment than the bargaining unit represented by the Carpenters. In this regard, the evidence shows that four (4) of the five (5) truck drivers are full-time employees who regularly work 40 hours per week. In contrast, the bargaining unit employees are all casuals with no guaranteed number of work hours. In addition, the truck drivers receive fringe benefits from the Employer such as vacation time, sick leave, health insurance and 401(k) retirement benefits, whereas the other petitioned-for employees receive benefits through a

union-sponsored plan. Also, the truck drivers are not in the existing collective-bargaining unit for which there is a nine-year bargaining history.

The record evidence does not establish that the truck drivers have significant contact or interchange with the bargaining unit employees. Admittedly, the truck drivers occasionally remove freight from their truck using a forklift or power jack and sometimes help forklift operators and freight handlers load and unload trucks. However, such infrequent contact appears to be incidental to their primary job function of operating the delivery trucks, preparing for deliveries and making deliveries. Nevertheless, the fact that, on occasions, truck drivers perform limited tasks related to the work of forklift operators and freight handlers is not sufficient evidence to find substantial interchange among truck drivers and other employees.

The record also shows that all of the truck drivers are required to possess a commercial driver's license (CDL) in order to perform their job duties of driving tractor trailers and similarly large vehicles throughout their work shift, whereas no other employees have such licensing requirement. Indeed, there is no evidence that any employee other than a truck driver ever operates the large delivery trucks. Hence, the job skills and functions of the truck drivers are starkly different than those of the warehouse and showsite employees. Accordingly, although it is undisputed that the truck drivers share common supervision with other employees and have some degree of interaction and integration with other employees, I find that these similarities are substantially outweighed by the factors supporting a conclusion that the drivers as a group do not share a community of interest with the rest of the petitioned-for employees and, therefore, should not be included in the appropriate unit.

In Levitz Furniture Co. of Santa Clara, Inc., 192 NLRB 61 (1971), the Board found that a proposed unit of truck drivers did not constitute a functionally distinct group with special interests sufficient to warrant their separate representation. However, I find the facts here clearly distinguishable. In Levitz, the truck drivers were not required to have any special licenses or driving tests. Other employees performed work regularly performed by truck drivers, and used the drivers' trucks to haul trash and other activities. In Levitz, the Board found that sales of merchandise required the close cooperation of selling and nonselling categories of employees, and that in the course of such sales there was substantial contact between customers and most employees, including truck drivers. Further, all employees participated in taking inventory once a year, approximately every six (6) weeks all employees participated in dockside sales of surplus merchandise, and at least three (3) truck drivers had been asked to sell on the sales floor. Additionally, in Levitz, temporary interchanges of employees throughout the store were frequent and regular. With the high degree of functional integration and employee interaction in Levitz, the Board found that, notwithstanding that truck drivers spent a majority of their time away from the plant, the facts supported a finding of a community of interest with all of the employees at the employer's store, and therefore determined that the truck drivers did not constitute a functionally distinct group with special interests sufficient to warrant separate representation. Id. at 62-63.

The circumstances in the present case are clearly distinguishable. In particular, the degree of employee integration and interchange in the instant matter is significantly less than in Levitz.

Unlike the truck drivers in Levitz, the drivers here do not spend substantial portion of their time working alongside or in close proximity with other employees. Similarly, other employees here are not involved substantially with driving. And the drivers here, unlike those in Levitz, are licensed.

On balance, I find that, although truck drivers share a limited number of similarities with other employees and have some contact with other employees, the weight of the evidence, including their exclusion from the existing bargaining unit, supports a finding that the petitioned-for truck drivers do not share a community of interest with the rest of the bargaining unit. Thus, I conclude that the truck drivers should be excluded from the appropriate bargaining unit found herein.

SUMMARY

In sum, I find that the Carpenters' petitioned-for employees, limited to the Employer's carpentry, carpet, drapery and GEM shop employees, is not a distinct and identifiable unit. Likewise, I find that the Teamsters' petitioned-for employees, limited essentially to the Employer's forklift operators, freight handlers and truck drivers, is also not a distinct and identifiable unit. The record establishes that the following factors: 1) collective bargaining history; 2) overall unit employees' terms and conditions of employment; 3) degree of employee interchange; and 4) Employer's substantial integration of its operations, serve to

negate the separate identity of the petitioned-for units, and that units limited to portions of the existing bargaining unit are not appropriate for purposes of collective bargaining. I find, therefore, in agreement with the Employer and the Painters, that the appropriate unit consists of the employees currently represented by the Carpenters. Accordingly, I shall direct an election therein.[28]

CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:[29]

A. The hearing officer's rulings are free from prejudicial error and are affirmed.

B. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction in this case.[30]

C. The Teamsters, Painters and Carpenters claim to represent certain employees of the Employer.[31]

D. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

E. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All regular part-time and casual forklift operators and freight handlers, carpentry shop employees, carpet shop employees, drapery shop employees, GEM shop employees, marshalling department employees, dispatch and receiving department employees, warehouse freight handlers and employees performing the duties of association freight work, loading and unloading of all pre-assembled GEM and handling of empty containers

employed by the Employer at its Orlando, Florida facility and at its showsites.

Excluded: Regular full-time employees of the Employer (defined to include those receiving or eligible to receive or participate in the Employer's Benefit Plans), employees who regularly perform work within the bargaining unit represented by IATSE, truck drivers, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by: 1) International Brotherhood of Teamsters, Local Union No. 385 or 2) International Union of Painters and Allied Trades, District Council 78, Local Union 73, AFL-CIO or 3) United Brotherhood of Carpenters and Joiners of America, Florida Carpenters Regional Council, Carpenters and Lathers, Local 1765. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who meet the Davison-Paxon eligibility formula and were employed during the thirteen (13) week period prior to the eligibility date, which is the ending date of the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Eligible to vote are all those in the unit who worked an average of four (4) or more hours per week during the thirteen (13) week period prior to the eligibility date. Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote.

In addition, in an economic strike that began less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that, within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be sufficiently large type and clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824, on or before **August 26, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to

file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. Since the list will be made available to all parties to the election, please furnish a total of four (4) copies. If you have any questions, please contact the Regional Office.

NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to the date of the election, excluding Saturdays and Sundays. Failure to follow the posting requirement shall be grounds for setting aside the election whenever proper and timely objections are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops an employer from filing objections based on the nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **September 2, 2005**. Immediately upon the filing of a request for review, copies thereof shall be served on the Regional Director and the other parties. The request may not be filed by facsimile.

DATED at Tampa, Florida this 19th day of August 2005.

/s/[Rochelle Kentov]

ROCHELLE KENTOV, Regional Director
National Labor Relations Board – Region 12

Fifth Third Center
201 East Kennedy Blvd. - Suite 530
Tampa, Florida 33602-5824

[1] The Employer's name appears as amended at the hearing.
[2] The Teamsters' name appears as amended at the hearing and by written stipulation of the parties.
[3] The Painters' name appears as amended at the hearing.
[4] The Carpenters' name appears as amended at the hearing.
[5] IATSE's name appears as amended at the hearing. IATSE was permitted to intervene based on a current collective-bargaining agreement. IATSE intervened for the limited purpose of protecting its interests in the existing unit of the Employer's employees and has expressed no interest in representing other employees employed by the Employer.
[6] International Brotherhood of Teamsters, Local Union No. 385.
[7] International Union of Painters and Allied Trades, District Council 78, Local Union 73, AFL-CIO.
[8] United Brotherhood of Carpenters and Joiners of America, Florida Carpenters Regional Council, Carpenters and Lathers, Local 1765.
[9] International Alliance of Theatrical Stage Employees, Motion Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local No. 835, AFL-CIO, CLC.
[10] The hearing in this proceeding opened and closed on July 21, 2005. After the granting of a one-week extension of time, briefs were due in the Regional office by close of business on August 4, 2005. Teamsters filed its brief with the Region in a timely manner. However, it apparently did not, at that time, serve its brief on the other parties. On August 9, 2005, Teamsters served its brief on the Employer. On August 11, 2005, the Employer filed a motion to strike the Teamsters' brief, citing Section 102.114(c) of the Board's Rules and Regulations, which states that failure to comply with service of documents shall be a basis for either: (1) a rejection of the document; or (2) withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had a reasonable opportunity to respond. The Employer contends that the Teamsters' brief should be rejected because it was not timely served on it and the other parties. The Teamsters' brief does not contain a service sheet showing that it was served on the Employer or the other parties. While the Teamsters has now served its brief on the Employer, there is no evidence that it has served its brief on any of the other parties. Accordingly, I grant the Employer's motion to strike the Teamsters' post-hearing brief. The Employer also notes that, in its brief, the Teamsters changed its position taken at the hearing by stating that it is now willing to proceed to an election in any bargaining unit found appropriate. The Employer urges that such change in position be rejected. However, in its request for an extension of time to file post-hearing briefs, served on all the parties on July 25, 2005, the Teamsters declared to all the parties its changed position. Thus, I will accept the Teamsters' changed position.
[11] The Employer filed a motion to correct the official transcript of these proceedings. None of the other parties filed a response to the Employer's motion. After due consideration, I grant the Employer's motion to correct the transcript as requested.

[12] Carpenters orally amended its petition at the hearing.
[13] Teamsters orally amended its petition at the hearing.
[14] Painters orally amended its petition at the hearing.
[15] The International Brotherhood of Electrical Workers, Local Union 606 (IBEW), represents two (2) electricians employed by the Employer. Although it was notified of these proceedings, IBEW has not intervened in this matter.
[16] These approximate numbers are based on the Employer's payroll records, for the second quarter of 2005, submitted into evidence at the hearing. With the exception of the four (4) full-time truck drivers sought by the Teamsters, none of the employees in any of the petioned-for units are full-time employees.
[17] The Employer's payroll records show that, during the second quarter of 2005, it employed approximately 105 casual employees and that, of those employees, approximately 70 employees meet the Davison-Paxon eligibility formula. I have been administratively advised that the Teamsters, Painters and Carpenters have presented a sufficient showing of interest in the bargaining unit found appropriate herein. This administrative determination is not subject to litigation. United States Gypsum Company, 161 NLRB 601 (1966).
[18] The parties stipulated that the following 19 individuals are supervisors within the meaning of Section 2(11) of the Act: 1) John Ellis, warehouse manager; 2) Brenda Rainey, warehouse supervisor – E&D; 3) Jim Griffin, warehouse supervisor – decorating; 4) Eric Birdsell, warehouse supervisor – advanced freight; 5) Ralph Hickman, warehouse supervisor – freight; 6) Marc Cancel, warehouse operations coordinator – freight; 7) Edwin Belisle, senior operations manager; 8) Todd Wallace, usage manager; 9) Jason Stanforth, operations manager; 10) John Wells, operations manager; 11) Ewell Carter, operations manager; 12) J.T. Hannon, operations manager; 13) Doland Austin, operations manager; 14) Doug Coleman, operations manager; 15) Tom Mazziotta, operations manager; 16) Bridgett Carter, operations manager; 17) Ron Harand, operations manager; 18) Mark Cascarella, operations supervisor; and 19) Jon Deer, operations supervisor.
[19] Moore said that the Employer does not use the job title of checkers in the Orlando, Florida facility. With regard to the job classification of furniture handlers, Moore stated that the Employer uses a specialty company for furniture handling, but if necessary the Employer would assign IATSE employees to perform such duties.
[20] Moore stated that the association is the host or management organization of the show or convention where the exhibition of products and services takes place. Moore noted that association work involves performing work for the association such as constructing the entrance unit, which advertises the show, the registration counter and the fill-in counter. Moore also pointed out that employees represented by the Carpenters perform association freight work such as unloading literature and restocking it in the distribution area.
[21] The parties stipulated that Kevin Harmon, a freight handler in the marshalling department, and Ed Lehmkuhl, a freight handler in the dispatch and receiving department, are covered under the Carpenters agreement and do not work in any of the four (4) warehouse shops (i.e., carpentry, carpet, drapery and GEM).
[22] The parties stipulated that the employees employed in the lead category are employees under the Act, are not supervisors and should be included in the bargaining unit found appropriate, subject to a determination on the proper scope of the bargaining unit.
[23] The Employer has five (5) finish carpenters who work in the carpentry shop, but who also work in the other three (3) shops on a transfer basis.
[24] The four (4) full-time truck drivers have a class A CDL, while the part-time truck driver has a class B CDL, which means that he can only drive vehicles weighing less than 26,001 pounds.
[25] The parties stipulated that Hoke is not a supervisor within the meaning of Section 2(11) of the Act.
[26] The Employer noted that, by seeking to sever the existing bargaining unit, Carpenters is attempting to disclaim interest in a part of the bargaining unit. However, in his testimony, McCoy made clear that, although the Carpenters are willing to give up part of the bargaining unit to the Teamsters, it is not seeking to disclaim interest in the bargaining unit it currently represents.
[27] As previously noted, on February 11, 2000 in Case 12-RC-8371, Carpenters was certified as the collective-bargaining representative of the bargaining unit. While that certification included

truck drivers, the Employer and Carpenters subsequently removed that classification from the bargaining unit covered by the parties' most recent collective-bargaining agreement.

[28] The Teamsters, Painters and Carpenters all stated that they are willing to proceed to an election in any alternative bargaining unit found appropriate herein.

[29] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me as Regional Director.

[30] The parties stipulated that, during the past 12 months while conducting its business, the Employer derived gross revenues valued in excess of $500,000 and during the same period of time purchased and received goods and materials, at its Orlando, Florida facility, valued in excess of $50,000 directly from points located outside the State of Florida.

[31] The parties stipulated, and I find, that Teamsters, Painters, Carpenters, and IATSE are labor organizations within the meaning of Section 2(5) of the Act.